April 4, 2007

Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Deena Shetler: deena.shetler@fcc.gov
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Re: WC Docket No. 06-210
CCB/CPD 96-20

Ex-Parte Comments of 800 Discounts, Inc.

AT&T's Concession to the NJ District Court Plan Obligations Stay with CCI and Do Not Transfer to PSE on the "Traffic Only" Transfer

Dear Deena

AT&T's Dec 20th 2006 and Jan. 31st 2007 briefs to the FCC argue that under section 2.1.8, PSE would assume CCI's actual plan obligations.

AT&T also bogusly asserts that the many record excerpts evidenced by petitioners in which AT&T claimed that CCI keeps all the plan obligations on the traffic only transfer was only AT&T referring to CCI keeping **joint and several liability obligations** and not actual obligations.

Of course never prior to 2006 did AT&T ever argue that CCI's obligations were just joint and several liability obligations and not actual obligations. Joint and several liability obligations of course only pertain to plan transfers.

The reason why AT&T asserted its bogus fraudulent use claims, and why attempted to file and retroactively enact Transmittal 8179 was of course because **AT&T was well aware that plan obligations do not transfer on traffic only transfers.**

Take a look at exhibit A here. This is page 5 of AT&T's November 28th 1995 brief to Judge Politan's NJ District Court. This brief was written prior to the AT&T con artists knowing that they were going to eventually need to try and blow heavy smoke on the Courts and the FCC regarding which obligations transfer on traffic only transfers.

Remember back in 1995 the only AT&T scam then was to con the Court and FCC into believing that section 2.1.8 did not allow traffic only transfers. The DC Circuit figured out that masterful AT&T scam job!

In the second paragraph of exhibit A---- AT&T explicitly states in regards to this traffic only transfer that under the tariff the plan obligations (revenue commitments and associated shortfall and termination obligations) would be **CCI's not PSE's.**

> First, a transfer of substantially all of the locations on the plans would have the result of increasing the potential shortfall to AT&T. Secondly the possibility that CCI will be unable to satisfy its **tariffed obligations** because it is transferring its principal assets -- the end-user accounts--- to PSE would leave CCI with no apparent revenue stream to meet its **existing commitments** and no apparent assets from which to satisfy **potential shortfall liability**. These charges are all **"tariffed" obligations,** for which CCI**,** **"not PSE"** (which would have the revenue stream to satisfy such charges), **would be obligated.**

AT&T is explicitly stating that **under the tariff PSE is not responsible to assume the plan obligations** (revenue commitments and associated shortfall and termination charges) —CCI remains obligated for these plan obligations!!! The obvious reason why AT&T states the traffic only transfer would increase the potential for CCI shortfall is because AT&T is recognizing these obligations stay with CCI.

AT&T is stating these are CCI existing commitments- yes the actual commitments—not joint and several liability commitments. AT&T's correct position to the Court twice explains that these obligations are "**tariffed obligations."**

AT&T explicitly states what the obligations are --- "potential shortfall"—a plan obligation. As the FCC is aware AT&T has already conceded in 1996 that the there was no question of termination charges because the plans were not being terminated. The FCC 2003 decision also noted this at Footnote 56 at page 8 which is exhibit B to petitioners initial filing:

> Although AT&T also argues that the move also avoided the payment of tariffed termination charges, id., it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) **is not at issue here. Opposition at 3 n.1.** That is consistent with the facts of this matter; petitioners never terminated their plans. Accordingly, termination charges are not at issue in this matter.

As we have subsequently seen AT&T has also conceded in its briefs of Dec 20th 2006 and Jan 31st 2007 that the CCI/Inga plans in question were all pre-June 17th 1994 grandfathered at the time of the Jan 1995 traffic only transfer and thus were immune from shortfall and termination liabilities until years later.

AT&T's most recent con (there have been so many that we have a complete spread sheet to keep track of them) is that PSE refused to accept the obligations.

Not only is there no where in the record in which PSE ever makes such a claim; (in fact in its 2.1.8 traffic only transfer submission to AT&T PSE states it is doing a "proper transfer") but in exhibit A ----AT&T concedes PSE did not need, **as per the tariff**, to assume CCI's plan obligations.

Yes AT&T simply did not know at the time of its brief that the issue would go from trying to figure out if 2.1.8 allowed traffic only transfers to later needing to determine which obligations transfer on a traffic only transfer.

Yes AT&T who has caused the judicial system to waste so much time and so much of tax payer’s money simply did not know that its inadvertent concession was to be the final nail in its coffin.

____/s/ Al Inga Pres___

EXHIBIT A

AT&T brief to NJ District Court Nov 28th 1995
Cover page and see 2nd page, 2nd paragraph here
which was page 5 of AT&T's brief.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMBINED COMPANIES, INC., AND WINBACK & CONSERVE PROGRAM, INC., ONE STOP FINANCIAL, INC., GROUP DISCOUNTS, INC., 800 DISCOUNTS, INC., AND PUBLIC SERVICE ENTERPRISES OF PENNSYLVANIA, INC., Plaintiffs, v. AT&T CORP., Defendant.	:	HON. NICHOLAS H. POLITAN, U.S.D.J. CIVIL ACTION NO. 95-908 (NHP)

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AT&T'S BRIEF IN CONNECTION WITH THE REHEARING ON PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION

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II. IF THE COURT WERE TO ISSUE AN INJUNCTION, THE INJUNCTION BOND SHOULD BE $15,000,000

A party whose application for a preliminary injunction is granted may be required to post security in order to pay "such costs and damages as may be incurred or suffered by any party who is wrongfully enjoined or restrained." *Fed. R. Civ. P.* 65(c). The posting of a bond is required when the potential for monetary loss is substantial. *System Operations v. Scientific Games Dev. Corp.*, 555 F.2d 1131 (3d Cir. 1977). This is just such a case.

The harm resulting from an order for AT&T to execute the CCI-PSE transfer is two-fold. First, a transfer of substantially all of the locations on the Plans would have the result of increasing the potential shortfall to AT&T. Second the possibility that CCI will be unable to satisfy its tariffed obligations because it is transferring its principal assets --- the end user accounts --- to PSE would leave CCI with no apparent revenue stream to meet its existing commitments and no apparent assets from which to satisfy potential shortfall liability. These charges are all tariffed obligations, for which CCI, not PSE (which would have the revenue stream to satisfy such charges), would be obligated.